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DEVELOPING A WORLD VISION: AN INTRODUCTION TO INTERNATIONAL ENVIRONMENTAL POLICY

Beverly McQueary Smith*

“Where there is no vision, the people perish.”
Proverbs 29:18 (King James).

In October 1991, the *Touro Journal of Transnational Law* held a symposium focusing on international environmental law. I am delighted to introduce the volume which contains an array of articles which evolved from that program examining one of the most stimulating aspects of environmental law.

In June 1992, world leaders, environmentalists and representatives from non-governmental organizations (NGO's), among others, will meet in Rio de Janeiro, Brazil, at the United Nations Conference on the Environment and Development (UNCED) to help shape the course of environmental policy for the next several decades. With enthusiasm born of insight, the *Touro Journal of Transnational Law* determined that international environmental law poses challenges and choices for policy-makers, developers, and the peoples of the world, and thus organized a conference and elected to publish the papers spawned from that meeting.

Stories about environmental degradation and the exploitation of natural resources fill local and national newspapers.¹ Thus, most

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1. For example, in the October 8, 1991, issue of the *N.Y. Times*, the paper contained a host of articles concerning Professor Anita Hill's accusations that Clarence Thomas, then a nominee for Associate Justice of the United States Supreme Court, had sexually harassed her, but the paper still elected to publish two letters to the editor about the ruin of the Florida Everglades. See Mark Derr, *In Ruin of Everglades, Many Share the Blame*, N.Y. TIMES, Oct.

citizens know about recycling² and that consuming bottled or filtered water may prevent them from ingesting water contaminated with lead or other pollutants.³ Citizens may ignore the impact of economic development and its concomitant

8, 1991, at A24; Timothy D. Searchinger, *Farming's Damage*, N.Y. TIMES, Oct. 8, 1991, at A24.

Another article describes Henry David Thoreau's haunt, Walden Pond, and the long-term drop in its water quality. The greater presence of diatoms, silica-walled algae that leave their skeletons behind when they die leads the researcher, Dr. Majorie Winkler, to believe that the pond has been affected by acid rain. In addition, the presence of diatoms and other organisms indicate that the pond must have become laden with nitrogen and phosphates, chemicals which promote excessive growth of algae that can cloud a lake and eventually choke its animal life. William K. Stevens, *History of Walden Emerges From its Mud*, N.Y. TIMES, Oct. 8, 1991, at C1.

"You can tell people didn't really worry about what was leaching into the soil," said Dr. Winkler. The organic matter and the nutrients could come from leaky outdoor toilets, farm wastes or any of a number of sources.

All these changes show that there has been a decline in the water quality at Walden Pond due to modification of the drainage basin by people

But she says, the pond is very deep and should be able to recover naturally from eutrophication if sewage is adequately treated and removed from the beach area, if shoreline modifications cease and if development is limited in the pond's drainage area.

Id. at C10.

That same paper in another article urged parents to have the blood lead levels of their children tested. Lead is one of the substances regulated by the U.S. Environmental Protection Agency under its Clean Air Act, 42 U.S.C. §§ 7401-7642 (1988). Philip J. Hilts, *Lower Lead Limits Are Made Official*, N.Y. TIMES, Oct. 8, 1991, at C3.

2. See, e.g., New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J. STAT. ANN. § 13:1E-99.32 (West Supp. 1992); Oregon Recycling Opportunity Act, OR. REV. STAT. §§ 459.005-.995 (1983); Municipal Waste Planning, Recycling and Waste Reduction Act, 1988 Pa. Laws 556; Solid Waste Planning and Recycling Act, ILL. REV. STAT. ch. 85, para. 5981 (1991); W. VA. CODE § 20-11-5 (1992); NORTH MIDDLETON TOWNSHIP, PA., ORDINANCE 91-1; Akron, Ohio, Recycling Ordinance (Oct. 1976).

3. News reporter Ms. Hattie Kaufman did a special report on types of home water filtering systems on a CBS morning newscast. *CBS This Morning* (CBS television broadcast, Apr. 8, 1992).

environmental degradation unless the proposed location affects their interests or, in other words, is in their own backyards.⁴ Thus, negotiators at UNCED will seek to determine, among other things, whether economic development and environmental concerns can co-exist. "Sustainable development" embraces a theoretical concept integrating environmental and economic concerns in such a way that "development meets the needs of the present without compromising the ability of future generations to meet their own needs."⁵

By way of introducing the symposium edition, Section One of this article makes three points. First, it argues that people need a world vision which understands that "there is no away" and that all environmental degradation is in our own backyards. In other words, people should abandon the notion of a "disposable" or "throwaway" society and, instead, focus on reducing the amount of waste each person generates and the manufacturing and use of recyclable products. Second, it urges all people throughout the world to learn more about indigenous peoples⁶ and how they

4. The "Not In My Backyard" or NIMBY concept describes an attitude toward the environment in which people acquiesce to the dumping of wastes or the building of manufacturing plants so long as they perceive that the location of the dump site or plant will not have an adverse impact on them personally.

5. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987) [hereinafter Brundtland Report of 1987].

6. On October 3, 1991, the Economic and Social Council of the United Nations issued a report entitled *Discrimination Against Indigenous Populations* which was a Report of the Working Group on Indigenous Populations on its ninth session. In the introduction, the Chairperson/Rapporteur, Ms. Erica-Irene A. Daes, describes the mandate and the genesis of The Working Group on Indigenous Populations (hereinafter Working Group).

The creation of the Working Group on Indigenous Populations was proposed by the Sub-Committee on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

- (a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, including information requested by the Secretary-General annually from

peacefully co-exist in their habitats so that—instead of propagating a model of economic development which levels the ground and thereby kills a plant which can alleviate pain in favor of building a manufacturing company which makes synthetic painkillers—we would learn to understand, appreciate and use the data that indigenous people have about the environment.⁷ Third, it suggests that all people should share the benefits and burdens of environmental pollution equitably. No one group should bear a disproportionate burden for cleaning up the environment or for holding the wastes generated by all members of society.

SECTION ONE

I. THERE IS NO AWAY!

The development of an environmental ethic which encompasses

Governments, specialized agencies, regional intergovernmental organizations in consultative status, particularly those of indigenous peoples, to analyze (sic) such materials, and to submit its conclusions to the Subcommission, bearing in mind the final report of the Special Report of the Rapporteur of the Sub-Commission, Mr. Jose R. Martinez Cobo, on the Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7 and Add.1-5);

(b) Give special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and the differences in the situations and aspirations of indigenous peoples throughout the world.

UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, DISCRIMINATION AGAINST INDIGENOUS PEOPLES; REPORT OF THE WORKING GROUP ON INDIGENOUS POPULATIONS ON ITS NINTH SESSION, U.N. ESCOR, U.N. Doc. E/CN.4/Sub.2/1991/40/Rev.1 (1991).

7. Ms. Kerry Kennedy Cuomo, Keynote Address at the Yale Environmental Law Association's conference on Earth Rights and Responsibilities held at Yale Law School (Apr. 3, 1992). In that speech, Ms. Cuomo describes a visit to Borneo and a walk she took through the rain forest with one of the chiefs who pointed out various plants to her and advised her of the medicinal attributes of each.

a world view must lead people everywhere to limit the amount of wastes they produce. In retrospect, the abnegation of some of the lifestyle patterns of yesteryear netted us normative conduct which embraced the idea of a throwaway society whose basic tenet is "disposable is better."

In recent years, too many people stopped using the recyclable glass milk bottle which was delivered to their doors daily or every few days and started using milk cartons which could be discarded. People who remember earning a few cents collecting soda bottles and returning them to the stores in the 1950's find that the advent of aluminum cans or non-recyclable bottles thwarted the efforts of youths to earn money that way in the 1980's. Monogrammed cigarette lighters yielded to disposable, non-refillable counterparts. Cloth diapers and rubber pants yielded to combination throwaways. Once manufacturers established a market for slick packaging coupled with the ease of discarding the remains of the package and the remnants of its contents, the demand for landfills, incinerators and waste treatment facilities escalated. As we have begun to run out of sites for locating the wastes and waste processing and storing facilities, the consciousness of people has been jarred awake to the notion that throwing something away is no longer viable because there is no away. Sites in distant counties, states and foreign countries evaporated as people who lived in those communities balked at accepting wastes generated by people from other locales. A reevaluation of the policy that disposable is better has spawned a resurgence of the recycling movement of yesteryear.⁸ Did the trend away from disposable packaging and products come too late? Let us hope not. An environmental ethic which recognizes that no place on the planet is appropriate for dumping must become the norm. Everyone must recycle, and industry members must develop products which promote

8. A trip to one's local supermarket will reveal that plastic grocery bags are recyclable or biodegradable. Detergents no longer contain phosphates. Some jurisdictions sell beverages in returnable bottles. In some supermarkets, consumers can choose to have their groceries placed in either paper or plastic bags.

recycling.

II. THE SEVENTH GENERATION: A LESSON FROM MEMBERS OF OUR INDIGENOUS WORLD FAMILY

A world vision for human survival must embrace a concomitant concept of preservation of all life-forms on the planet. No member of any species should be empowered to determine which life-forms can live and which warrant extinction. Indigenous people lived in harmony with their environment for many years before settlers came imposing their own value system and way of life on the members of the extant community. The Great Law of the Six Nations of the Iroquois requires that every deliberation consider the impact of any of its decisions on the next seven generations.⁹

One maxim holds that those who disregard the lessons of history are doomed to repeat its follies. The United States of America and other developed or industrialized nations designed a model of economic development which many other nations seek to replicate throughout the world. The model destroys natural resources to build manufacturing and other plants on the leveled sites. In the process, a painkilling plant or herb may get wiped off the face of the earth so that the new building which houses the business enterprise can employ people who research and develop synthetic painkillers. A world vision for the planet should encompass an appreciation and respect for other life-forms: plant, animal or mineral. An environmental ethic in this context would allow for the construction of a new economic paradigm which supports the survival of indigenous populations who peacefully co-exist with their habitats.

Additionally, the current economic development model that is being emulated throughout the world failed to consider *ab initio* the environmental consequences of industrialization. The proliferation of laws to correct that failure demonstrate that

9. Robert F. Housman, *Sustainable Living: Seeking Instructions for the Future: Indigenous Peoples' Traditions and Environmental Protection*, 3 TOURO J. TRANSNAT'L L. 141, 151-52 (1992) (citing SEVENTH GENERATION).

people now realize that developers cannot deplete environmental resources with impunity or on credit. The emerging view is to have business fashion an environmental impact statement which contains an assessment of the extent to which there will be adverse environmental impacts and how they propose to minimize unavoidable adverse impacts—a pay as you go concept.¹⁰ Surface coal miners subject to federal law must plan to reclaim the land.¹¹ Dumpers of toxic wastes must cleanup the sites.¹² Throughout the United States of America, polluters must work toward national goals for improving air¹³ and water¹⁴ quality.

As my grandfather would say, “the federal government is seeking to lock the barn door after the animals have escaped.”

Yes, in some respects, governmental policy basically allowed industry members to destroy the landscape, build skyscrapers and billowing smoke stacks which evidenced progress. In hindsight, the industry members and the policy-makers failed to calculate the depletion costs associated with destroying natural resources. If other people in other climates can learn from our mistake, they may be able to avoid repeating our folly.

The ostensible merits of factoring in natural resource depletion costs at the beginning of a project rather than at the end when cleanup and reclamation cost prototypes exists means that the start-up costs for the undertaking may make the total project costs on the front-end prohibitive. Moreover, it smacks of urging underdeveloped countries to: “do what I say do, not what I did.” Environmental paternalism or colonialism remains as unattractive to leaders of underdeveloped countries as any other kind of paternalism. They argue that such an approach will infringe on their sovereign right to exploit the natural resources in their boundaries when industrialized countries exploited their resources

10. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (1988).

11. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328 (1988).

12. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. §§ 9601-9675 (1988).

13. Clean Air Act, 42 U.S.C. §§ 7401-7642.

14. Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (1988).

without similar environmental restrictions. Using the argument that some economic development is better than none, policy-makers in underdeveloped countries may elect to build a plant which contains inadequate pollution control technology rather than a state of the art plant with the best pollution control devices. The extent to which the choice of these governmental entities adversely impacts the global environment supports an argument that other nations should help them defray any costs associated with their decision to use the best pollution control technology. In that way, the underdeveloped countries which bear the burden for correcting for the irresponsible conduct of their industrialized neighbors will still be able to meet their other economic goals. In sum, a decision about how, if at all, to build a plant or industrial complex which adheres to The Great Law of the Six Nations of the Iroquois comes easily: it embodies a duty to consider the decision's impact on the next seven generations. It makes all of the people of the world trustees of the earth.

III. NEITHER A DUMPER OR A DUMPEE BE: THE GOLDEN RULE AND ENVIRONMENTAL EQUITY¹⁵

The Bible instructs: do unto others as you would have them do unto you. ¹⁶ In fact, if people adhered to this injunction today, the environmental movement would not be plagued by the NIMBY or "Not In My Backyard" approach to siting wastewater or sewage treatment plants or any other types of wastes. Given the NIMBY phenomenon, people want to enjoy the benefits of flushing their toilets, but they would prefer to shift the burden of siting the sewage treatment plant to a place removed from their environs. The subtitle of this section, "Neither a dumper nor a dumpee be," urges a world view rejecting dumping on either side of the equation or of the ocean. Don't dump! Don't receive any

15. For a fanciful discussion of some of the factors which policy-makers consider, see Joseph P. Tomain, *Distributional Consequences of Environmental Regulation: Economics, Politics, and Environmental Policymaking*, 1 KAN. J.L. & PUB. POL'Y 101 (1991).

16. See *Matthew* 7:12 (King James).

garbage from a dumper! Embodied in the concept that people should not dump is a concomitant idea that people should reduce the amount of wastes they generate. One way of doing that is by recycling which gets us back to part one of this article. Nonetheless, until all of society achieves the goal of no wastes, someone or some groups or some countries receive the bulk of the wastes whatever their source.

In 1987, the Commission for Racial Justice of the United Church of Christ released a study which reported that three of every five black and Hispanic Americans live in a community with uncontrolled toxic-waste sites.¹⁷ Several years earlier with less fanfare, the United States General Accounting Office (GAO) examined data from eight Southeastern states that comprise Region IV of the United States Environmental Protection Agency (EPA) to determine what correlation, if any, existed between the siting of toxic polluters and race, ethnicity and poverty. GAO concluded that blacks represented a majority of the population in three of the four communities in which off-site hazardous waste landfills were located, and at least 26 percent of the population in all four communities had income below the poverty level.¹⁸ Professor Donald Elliott, former General Counsel of EPA explains disparate outcomes this way:

Standard economic and public choice theory would predict that groups that are less powerful politically and economically would be more likely to be exposed to disamenities of all types. In any event, in this instance, those who are least able to defend themselves through the political and economic system are more likely to bear the brunt of the harms of pollution.¹⁹

17. UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES xiv (1987).

18. U.S. GENERAL ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983).

19. E. Donald Elliott, Jr., *A Cabin on the Mountain: Reflections on the Distributional Consequences of Environmental Protection Programs*, 1 KAN. J.L. & PUB. POL'Y 5, 7 (1991).

Professors Regina Austin and Michael Schill state:

Polluters know that communities comprised of low-income and working class people with no more than a high school education are not as effective at marshalling opposition as communities of middle or upper income people. Poor minority citizens have traditionally less clout with which to check legislative and executive abuse or to challenge regulatory laxity. Private corporations, moreover, can have a powerful effect on the behavior of public officials. Poor minority people wind up the losers to them both.²⁰

In sum, governmental agencies charged with protecting the public health, elected officials responsible for representing their constituencies and entities in the private sector interested in increasing their profits have, heretofore, ignored the disproportionate and synergistic impact the poisonous fruits of industrial production have had on poor black and brown people throughout this nation.²¹ For instance, the EPA Environmental Equity Workgroup in February 1992, issued its draft report on *Environmental Equity: Reducing Risk for all Communities*.²² The workgroup declined to define equity in this context but elected to initiate a dialogue that would work toward addressing two issues: one, the distribution and effects of environmental problems and two, the environmental policy-making process. Also, the EPA Workgroup provided recommendations to the Administrator to implement an official EPA policy: "The consequences of environmental pollution should not be borne disproportionately by any segment of the population."²³ The EPA Workgroup report urges the EPA to increase the priority that it gives to issues

20. Regina Austin & Michael Schill, *Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69, 70 (1991) (citations omitted).

21. *Id.* at 69.

22. ENVIRONMENTAL EQUITY WORKGROUP, ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISKS FOR ALL COMMUNITIES (forthcoming Jul. 1992) (report to the Administrator from the EPA Environmental Equity Workgroup).

23. *Id.* (citing Administrator's Memo, April 1, 1991).

of environmental equity.²⁴ How the Administrator of EPA will accomplish this remains to be seen.

Just as in the United States we learned that the powerless ended up with the dregs of industrial production in their neighborhoods so now we see that undeveloped and underdeveloped countries are ending up with waste by-products generated by their more industrialized neighbors who can't or won't store their own wastes. Thus, no worldwide mandate exists which requires countries to treat or store all of the wastes they produce. If that were the case, then perhaps all countries would have incentives for reducing the quantity of waste they place in the wastestream. Similarly, people are not required to pay a quantity tax for all of the garbage they produce.

In sum, an environmental ethic for the next century must awaken in the consciousness of each person a realization that there is no away, that indigenous populations warrant our respect because of their relationship to the earth, and that no subset of a our local or world communities can be the dumpee.

SECTION II

This section provides an overview of the articles found in this volume. Professor Ved P. Nanda's article, *International Environmental Challenges: "Sustainable Development" and "Environmental Terrorism"*²⁵ sounds a note of urgency. He begins by quoting Mostafa Tolba, Executive Director of the United Nations Environment Program (UNEP):

Despite the efforts of government, [non-governmental organizations] and industry—and acknowledging regional differences—the global environment is worse now than it was two decades ago Not one major environmental issue debated in Stockholm has been solved. And new problems of planetary dimension emerged: climate change and global warming, ozone

24. *Id.*

25. Ved P. Nanda, *International Environmental Challenges: "Sustainable Development" and "Environmental Terrorism"*, 3 TOURO J. TRANSNAT'L L. 1 (1992).

layer depletion and the mass extinction of biological resources.²⁶ After setting a dreary scene, Professor Nanda then discusses sustainable development and environmental terrorism. To some, sustainable development embodies two mutually exclusive concepts. They ask how can human nature change to allow policy-makers to integrate environmental issues into development. Although Professor Nanda provides a fuller definition of what is meant by the term, the working description of sustainable development indicates that it “meets the needs of the present without compromising the ability of future generations to meet their own needs.”²⁷ Certainly, however, it is defined it means that world leaders must value their natural resources for present and future generations. “Environmental terrorism “ refers to a species of deliberate environmental damage like that inflicted on the world by Saddam Hussein during the Gulf War. Saddam Hussein intentionally released crude oil into the Gulf by opening the valves of Kuwait’s oil facilities and by deliberately igniting Kuwaiti oil fields.²⁸ Professor Nanda discusses the international law which authorizes responses to environmental terrorism and suggests that world leaders should draft a new convention on the protection on the environment in time of armed conflict reflecting a consensus of the international community about the unacceptability of this type of environmental damage.

Ms. Audra E. Dehan’s piece entitled, *An International Environmental Court: Should There Be One?*²⁹ describes the legacy we will leave our children if sovereignty does not give way to a global concern for protecting the environment. Ms. Dehan calls for a world court in which environmental disputes can be adjudicated. She also argues that protection of the environment should be linked to a fundamental right, akin to an individual right to life, in that environmental degradation is life-

26. *Id.* at 2.

27. *Id.* at 6.

28. *Id.* at 20-21.

29. Audra E. Dehan, *An International Environmental Court: Should There Be One?*, 3 TOURO J. TRANSNAT’L L. 31 (1992).

threatening.³⁰

In *Debt for Nature Swaps in the Amazon Basin: An Expanding Solution to the Debt Crisis*,³¹ Mr. Roy A. Torres first provides a history of the origins of the "Lovejoy Principle" or debt for nature swaps movement.³² Then, he argues for increased respect of indigenous peoples,³³ appreciation of the rain forests as centers of biodiversity,³⁴ renegotiation of loans to impose lower interest rates,³⁵ debt for nature swaps that diminish or reduce larger shares of the debt while at the same time recognizing Principle 21 of the Stockholm Declaration³⁶ so as to avoid conduct which resembles a new species of colonialism, *to wit*, "economic colonialism" or "environmental imperialism."³⁷ His article speaks with the voice of indigenous peoples whose ways of life falter in the face of commercialism and bulldozers.

At the Symposium on International Environmental Law held on October 15, 1991, several authors presented papers from which the following articles highlighted below emerged. Professor Philip Weinberg argues in *International Protection of Endangered Species: The Steps that Should be Taken*³⁸ that if the present generation allows the rhino and the condor to go the way of the moa and the passenger pigeon, then posterity will never forgive us.³⁹ Professor Weinberg states *inter alia* that endangered species are a fundamental part of the world's heritage and he echoes naturalist, William Beebe's point that one must create another

30. *Id.* at 52.

31. Roy A. Torres, *Debt for Nature Swaps in the Amazon Basin: An Expanding Solution to the Debt Crisis*, 3 TOURO J. TRANSNAT'L L. 59 (1992).

32. *Id.* at 64-67.

33. *Id.* at 77-78, 80-81, 81 n.168.

34. *Id.* at 80-81.

35. *Id.* at 81.

36. Principle 21 of the Stockholm Declaration recognizes that "States have, in accordance with the Charter of the United Nations and the principles of international law; the sovereign right to exploit their own resources pursuant to their own environmental policies." *Id.* at 80.

37. *Id.* at 78.

38. Philip Weinberg, *International Protection of Endangered Species: The Steps That Should be Taken*, 3 TOURO J. TRANSNAT'L L. 89 (1992).

39. *Id.* at 100.

heaven and earth before an extinct species can be recreated.⁴⁰ The article also raises questions about the scope of the extraterritorial effect of our Endangered Species Act and concludes that official United States policy changed after Jimmy Carter left the presidency and President Ronald Reagan's Secretary James Watt of the U.S. Department of the Interior reinterpreted Section 7 of the Endangered Species Act so as to make it inapplicable to a case in which the Army Corps of Engineers planned to build a dam in a foreign country. Professor Weinberg also suggests that developed nations must subsidize other countries that forego economic opportunities to protect an environmental interest or safeguard an endangered species.

Next, Professor William R. Ginsberg discusses *Global Warming*.⁴¹ Here again, he paints an overcast picture of a planet shrouded in a cloud of chloroflorocarbons (CFC's) and halons which work together to deplete the ozone. Furthermore, Professor Ginsberg asserts that if the growing use of fossil fuels one of the causes of global warming and population growth in Third World countries continues, the emissions from the less developed countries will catch up with the industrial countries in approximately twenty years.⁴² At bottom, Professor Ginsberg suggests that it is difficult for wealthy nations to take steps that will have an impact on lifestyles (like abandoning the use of air conditioners) and even more difficult, if not impossible, for poor nations to do so.⁴³

In *Global Issues: Policies and Dilemmas*⁴⁴, researchers Richard L. Stroup and Jane S. Shaw support the proposition that

40. *Id.* (citing Robert Irvin, *When Survival Is at Stake: A Proposal for Expanding the Emergency Exception to the Sixty-Day Notice Requirement of the Endangered Species Act's Citizen Suit*, 14 HARV. ENVTL. L. REV. 343, 361 (1990)).

41. William R. Ginsberg, *Global Warming*, 3 TOURO J. TRANSNAT'L L. 100 (1992).

42. *Id.* at 105 (citing Stetson, *People Who Live in Green Houses . . .*, WORLDWATCH, Sept.-Oct. 1991, at 22, 24).

43. *Id.* at 110.

44. Richard L. Stroup and Jane S. Shaw, *Global Issues: Policies and Dilemmas*, 3 TOURO J. TRANSNAT'L L. 111 (1992).

reasonable people can disagree. Quarreling with the scientific premises which undergird the global warming and ozone depletion debates, Stroup and Shaw suggest that individuals may be unwilling to forego the benefits of carbon dioxide and the products in which it is used. Critical of schemes to provide money to less developed countries, Stroup and Shaw argue that poor countries exist in “repressive regimes”—governments that do not allow economic forces to operate with any kind of freedom.⁴⁵ Thus, when the governments of developed countries give money to poor countries, the central government [most often] responsible for the economic depression of these countries gets the money. Left alone, the governments of poor countries will tend to topple of their own weight unless they are very repressive, and even then, as in the case of the Soviet Union, they tend to topple eventually.⁴⁶

Stroup and Shaw also challenge the United States of America and other developed countries to analyze the extraterritorial impact of certain decisions. Using the DDT story, they argue that once DDT was banned in the United States of America, other countries followed its lead with disastrous results. First, the substitutes may in fact be worse than the DDT itself—the cure may be worse than the illness. According to Stroup and Shaw, in Sri Lanka and Peru, for instance, the failure to use DDT resulted in outbreaks of malaria and cholera, respectively.⁴⁷

Sounding a death knell for many environmental solutions, Stroup and Shaw suggest that treaties between or among a few nations will prove inadequate, but that if more or all nations participate, agreement may elude them. Further, they are less optimistic about nations’ incentives for complying with global environmental policies in that the benefits may be global but the costs are local and changes in lifestyle make it unattractive for some countries to comply.⁴⁸

W. Robert Ward catalogues in *Defining Our Terms*:

45. *Id.* at 129.

46. *Id.*

47. *Id.* at 127-8.

48. *Id.* at 129.

*Conservation in the Context of Global Environmental Conventions*⁴⁹ the sources to which international environmental attorneys can look as the global environmental agenda develops at UNCED. Additionally, he points out the career opportunities for international environmental attorneys and he cites as an example that the International Activities Division of the Office of the General Counsel at the EPA had tripled in size during a twelve month period. Ward's list of sources includes: global environmental instruments, local and regional agreements, case law, domestic laws relevant to the implementation of international obligations, scholarly writings of international environmental law experts, which provide innovative concepts aimed at addressing our most critical environmental challenges;⁵⁰ nonlegal sources including scientific and technical periodical literature on the evolving concept of biological diversity, economic and social commentary on national accounting of forest resources, debt for nature swaps, impact of population growth on environmental degradation worldwide, analyses of current environmental problems by international organizations and non-governmental groups, and finally, non-written sources like environmental knowledge of indigenous peoples. Thus, it provides a useful checklist of sources of data about the burgeoning area of international environmental law.

In the next article, *Sustainable Living: Seeking Instructions for the Future: Indigenous Peoples' Traditions and Environmental Protection*,⁵¹ Robert F. Housman speaks with the voice of indigenous people worldwide who have witnessed the savage exploitation of their lands and its resources by interlopers who act without applying the principle of the seventh generation. While the United States' National Environmental Policy Act (NEPA)

49. W. Robert Ward, *Defining Our Terms: Conservation in the Context of Global Environmental Conventions*, 3 TOURO J. TRANSNAT'L L. 133 (1992).

50. For example, a regime for global forest management might use concepts of intergenerational equity to justify obliging all nations to protect both the short and long term ability of forests to provide environmental services such as watershed protection and the maintenance of soil nutrients, in the name of both present and future generations. *Id.* at 138.

51. Housman, *supra* note 9, at 141.

urges policy-makers to examine many factors before undertaking a course of action, it lacks a mandate which would do what the Great Law of the Six Nations of the Iroquois required: to wit, "that every deliberation must consider the impact of the decision on the next seven generations."⁵²

Housman also notes that while we are treating sustainable development or sustainable living like it is a new concept, it is not. He suggests that indigenous peoples in many instances peacefully coexisted with their environments so that the values of biodiversity and the seventh-generation principle sustained human life and that of the ecosystem in which the humans lived. Thus, Housman urges us to learn more from our indigenous neighbors and to value them as our equals.⁵³

Catherine Tinker's piece, *Strict Liability of States for Environmental Harm: An Emerging Principle of International Law*,⁵⁴ is informed by her attendance at the United Nations Preparatory Committee meetings which preceded UNCED and were held in Geneva, Switzerland from August 12, 1991 to September 4, 1991. In an effort to spur the formulation of international environmental law policies before the crises occurs, Professor Tinker urges a prevention rather than a prosecution model for promoting responsible conduct toward the environment. Thus, she foresees courts as major vehicles for protecting environmental injuries and urges the imposition of significant penalties for violations of obligations to preserve and protect the environment as deterrents to those who might otherwise flaunt regulations or short-cut preventive measures.⁵⁵

This volume also contains a book review by Professor Daniel C. Turack examining Patrick Thornberry's *International Law and the Rights of Minorities*, and several pieces written by students. One student scrutinizes the Palestinian Uprising or "Intifada" under international humanitarian law; another student discusses

52. *Id.* at 151.

53. *Id.* at 152.

54. Catherine Tinker, *Strict Liability of States for Environmental Harm: An Emerging Principle of International Law*, 3 TOURO J. TRANSNAT'L L. 155 (1992).

55. *Id.* at 158.

the future role of an international court of justice that is an organ of the United Nations. Yet another student describes the legal responses to homelessness in the United States, England and Canada, and finally one student compares artificial insemination under Jewish and American law. In short, this volume of the *Touro Journal of Transnational Law* contains an array of article which deal with controversial and thought-provoking issues in the forefront of international law.